



Public Employees for Environmental Responsibility

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National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

RE: FOIA REQUEST

To whom it may concern:

In a May 22, 2017 memo, U.S. Environmental Protection Agency (EPA) Administrator Scott Pruitt announced his intention to change how the Superfund program (the Comprehensive Environmental Response, Compensation, and Liability Act or CERCLA) is administered. In this memo, Mr. Pruitt stated that he had created a task force to develop “a detailed set of recommendations” before the end of June “to overhaul and streamline the [entire Superfund] process.”

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended, Public Employees for Environmental Responsibility (PEER) requests information concerning these proposed Superfund changes. Specifically, we request the following:

1. A list of the members of this task force, their tenure, and any documents reflecting the manner in which they were selected;
2. Any documents reflecting EPA’s efforts to comply with the Federal Advisory Committee Act (FACA) in the selection and operation of this task force;
3. Any documents concerning the tasks that this task force was charged to accomplish by Mr. Pruitt or other EPA official acting on his behalf;
4. Any documents reflecting the schedule of task force activities, meeting minutes and materials presented to the task force;
5. Any communications to or from the Office of the Administrator during Mr. Pruitt’s tenure concerning the need or basis for changing administration of Superfund;
6. The set of recommendations or other work product emanating from this task force;
7. Any documents reflecting plans or a schedule for complying with the National

Environmental Policy Act (NEPA) in pursuing significant Superfund operational changes;

8. Documents describing how and when public review of these recommendations will take place, including any plans to involve communities affected by Superfund operations; and
9. Copies of the “revised delegations and internal directive documents” referenced in the May 22 memo issued by Mr. Pruitt “to memorialize this change in how the agency makes these extremely significant decisions”;
10. The list of ongoing Superfund cleanups that are covered by the Pruitt memo; and
11. A copy of any decision documents, including stays and interim actions, taken by EPA in ongoing Superfund cases in connection with this memo.

For any documents or portions of documents that you block release due to specific exemption(s) from the requirements of the Freedom of Information Act, please provide an index itemizing and describing the documents or portions of documents withheld. The index should, pursuant to the holding of Vaughn v. Rosen (484 F.2d 820 [D.C. Cir. 1973] cert. denied, 415 U.S. 977 [1974]), provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the document or portion of a document withheld.

To the extent that EPA needs to perform a detailed review, PEER requests that all fees be waived because “disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor” (5 U.S.C. 552 (a) (4)(A)):

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government.

The FOIA request is, by its terms, limited to identifiable activities of EPA and its employees.

2. For the disclosure to be “likely to contribute” to the understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.

In numerous public statements, Mr. Pruitt has cited reform of Superfund as one of his top priorities.

The requested material would help the public understand how, and from what framework, the Administrator intends to accomplish this major change. The request would also allow the public to understand the extent to which these new policies are formulated completely behind closed doors, without any public involvement.

In addition, this material will enable the public to see whether EPA will comply with or will violate environmental laws, such as NEPA, and transparency laws, such as FACA.

As these topics are the explicit focus of this request, the requested material is directly informative in relation to the request.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requestor or a narrow segment of interested persons.

There are currently more than 1,300 active Superfund sites but the Government Accountability Office predicts that both the number of sites likely to be added to the National Priority List and the cost for their remediation are expected to rise.

EPA estimates that approximately 53 million people live within 3 miles of a Superfund remedial site; this is roughly 17% of the U.S. population, including 18% of all children in the U.S. under the age of five. Consequently, the public at large would be concerned about significant changes to Superfund. By its own press release on the subject, EPA tacitly concedes the wide public interest in the topic.

The general public also has a keen interest in whether EPA policy will be developed in a transparent manner and whether EPA complies with laws such as NEPA and FACA. All of the above reflect the acute public concern as to whether and how effectively EPA performs its mission.

PEER intends to provide the requested information to the general public through —

- ☐ Release to the news media;
- ☐ Posting on the PEER web page which draws between 1,000 and 10,000 viewers per day; and
- ☐ Publication in the PEER newsletter that has a circulation of approximately 20,000, including 1,500 environmental journalists.

PEER has a long track record of attracting media and public attention to the internal workings of EPA.

4. The disclosure must contribute “significantly” to public understanding of government operations or activities.

Mr. Pruitt’s memo promises that the task force will produce recommendations to reduce “the level of agency oversight” and spur “faster cleanups” by taking steps to, among other things —

- ☐ “Streamline” how contaminated sediment (often an expensive aspect of remediation) is treated;
- ☐ Employ “non-traditional approaches for financing site cleanup”; and
- ☐ “Reduce the ...costs and burdens borne by parties remediating contaminated sites.”

The requested materials will supply the missing details behind these potentially sweeping changes. Without this information, the public will lack a depth of understanding of how this major program would change.

The nature of the information should shed also direct light on the quality, openness, and integrity of EPA policy development and leadership.

5. The extent to which disclosure will serve the requestor's commercial interest.

Disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code.

6. The extent to which the identified public interest in the disclosure outweighs the requestor's commercial interest.

As stated above, disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501 (c) (3) of the Internal Revenue code.

If you have any questions about this FOIA request, please contact me at (202) 265-PEER. I look forward to receiving the agency's final response within 20 working days.

Cordially,

Jeff Ruch
Executive Director